

Pursuant to Local Patent Rule 4-3, Plaintiff Vasudevan Software, Inc. (“VSi”) and Defendants MicroStrategy Inc. (“MicroStrategy”) and TIBCO Software Inc. (“TIBCO”) hereby submit this Joint Claim Construction and Prehearing Statement (“Joint Statement”). VSi has brought a lawsuit against MicroStrategy for patent infringement in Case No. 3:11-cv-06637-RS (the “MicroStrategy case”) and VSi has also brought a lawsuit against TIBCO for patent infringement in Case No. 3:11-cv-06638-RS (the “TIBCO case”). The Joint Case Management Statement in each of the MicroStrategy and TIBCO cases state under the heading of “Discovery” and subheading of “Discovery Limitations” that “The parties [] agree to consolidate this case and the [other] case for purposes of claim construction only.” MicroStrategy Case Dkt. No. 56, p. 9; TIBCO Case Dkt. No. 69, p. 8. VSi, MicroStrategy and TIBCO have all agreed to submit a joint P.R. 4-3 Statement. VSi requests consolidated briefing by VSi on one side and MicroStrategy and TIBCO on the other. MicroStrategy and TIBCO do not agree to consolidate the claim construction briefing.

The four patents asserted against MicroStrategy are: (1) U.S. Patent No. 6,877,006 (“the ‘006 Patent”); (2) U.S. Patent No. 7,167,864 (“the ‘864 Patent”); (3) U.S. Patent No. 7,720,861 (“the ‘861 Patent”) and (4) U.S. Patent No. 8,082,268 (“the ‘268 Patent”). The patent asserted against TIBCO is the ‘864 Patent.

I. LPR 4-3(a) Agreed Claim Constructions

The Parties’ agreed constructions are below:

Term to be Construed	Parties’ Agreed Proposed Construction¹
“database(s)”	“a structured set of data”

¹ TIBCO agrees that these constructions are proper as to the asserted claims of the ‘864 Patent. TIBCO takes no position on the proper construction of terms that appear in the ‘006, ‘861 and ‘268 Patents.

Term to be Construed	Parties' Agreed Proposed Construction ¹
['006 claims 1-2; '864 claims 1-4, 8-9, 12-14, 17-19, 23, 25-28, 33-34, 37-39, 42-44, 48, 50; '861 claims 1-4; and '268 claims 1-2, 6, 9-10, 14]	
"dynamically on demand" / "dynamically ... on demand" / "dynamic on demand" / "dynamically" ['006 claims 1-2; '864 claims 1, 26; '861 claims 1, 3; and '268 Patent claims 1, 9]	"at run time in response to an ad hoc user query or request"
"multidimensional database" / "multi-dimensional database[s]" ['006 claims 1-2; and '864 claims 1, 26]	"a database having more than two dimensions"
"stored retrieved data" ['006 claims 1-2; '864 claims 1, 26]	"stored retrieved data that does not consist solely of metadata"
"each access code corresponding to a number of [the] disparate databases that may be accessed with the access code" ['864 claims 1, 4, 26, 29; '861 claims 2, 4]	"each access code is associated with a number of [the] disparate digital databases from which data may be obtained using the access code"
"entity" ['864 claims 11, 16, 22, 36, 41, 47]	"an object or thing"
"component" ['864 claims 16, 22, 41, 47]	"a part of an entity"
"associated metadata" ['268 claims 1, 9]	"data that describes the live source data, such as field names and field data types"
"a slice of an OLAP cube" ['268 claim 9]	"a subset of an OLAP cube"

II. LPR 4-3(b) Proposed Constructions for Terms in Dispute

See Exhibit A for a chart showing the Parties' proposed constructions with intrinsic and extrinsic evidence supporting such constructions. The Parties reserve the right to rely upon any

1 intrinsic or extrinsic evidence identified by any other Party, and any evidence obtained through
2 claim construction discovery. In addition, each Party reserves the right to amend, correct, or
3 supplement its claim construction positions and supporting evidence in response to any change
4 of position by any other Party, or for other good cause. The Parties have agreed not to rely upon
5 any testimony from expert witnesses to support their respective claim constructions.
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7 **III. LPR 4-3(c) Identification of Most Significant Claim Terms**

8 All the Parties identify the following term whose construction will be most significant to
9 the resolution of the case: “disparate [] databases.” None of the Parties believe that the claim
10 construction for “disparate [] databases” will be case or claim dispositive. MicroStrategy
11 identifies the following terms whose constructions will be most significant to the resolution of
12 the case: “a persistent repository” and “directly.” MicroStrategy believes the claim constructions
13 for “a persistent repository” and “directly” may be claim dispositive.
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15 **IV. LPR 4-3(d) Anticipated Length of Time for Claim Construction Hearing**

16 Per the Court’s Orders, the claim construction hearings in the MicroStrategy Case and the
17 TIBCO Case will be combined. MicroStrategy Case Dkt. No. 63, p. 2; TIBCO Case Dkt. No.
18 75, p. 2. VSi proposes that (i) VSi receive 30 minutes for a presentation on the background
19 technology and 60 minutes for oral argument on claim construction issues and that (ii)
20 MicroStrategy and TIBCO jointly receive 30 minutes for a presentation on the background
21 technology and 60 minutes for oral argument on claim construction issues. VSi thus proposes
22 that the claim construction hearing should last no longer than 3 hours. MicroStrategy and
23 TIBCO jointly propose that (i) VSi receive 30 minutes for a presentation on the background
24 technology and 90 minutes for oral argument on claim construction issues and that (ii)
25 MicroStrategy and TIBCO jointly receive 30 minutes for a presentation on the background
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1 technology and 90 minutes for oral argument on claim construction issues. MicroStrategy and
2 TIBCO thus propose that the claim construction hearing should last no longer than 4 hours.

3 **V. LPR 4-3(e) Anticipated Witnesses at the Claim Construction Hearing**

4 None of the Parties expect to call any witnesses at the claim construction hearing.
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2012, I electronically filed the foregoing document in compliance with Local Rule CV-5-5(b). It has been served this day on the counsel of record, who are deemed to have consented to electronic service via the Court's CM/ECF System.

/s/ Eric J. Enger

Eric J. Enger

EXHIBIT A**I. Disputed Terms Applicable to All Parties**

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence²	Defendants' Proposed Construction	Defendants' Supporting Evidence
<p>“disparate [] databases”</p> <p>[‘006 claims 1-2; ‘864 claims 1, 4, 26, 29; ‘861 claims 1-4]</p>	<p>“incompatible databases having different schemas”</p>	<p>Intrinsic Evidence: ‘006 Patent – 1:25-34; 1:41-57; 2:38-42; 2:60-3:3; 3:4-10; 3:11-16; 5:46-6:51; 6:64-7:8; 7:9-8:34; 11:59-12:39; Figs. 6, 19-22..</p> <p>‘006 File History – 10/29/03 Response to Office Action, pp. 19-21 (VSI 265-7); 11/17/07 Decision on Request for Ex Parte Reexamination (VSI 659)</p> <p>‘861 File History – 9/3/08 Response to Office Action, pp. 9-10 (VSI 11493-4)</p> <p>Provisional File History – Product Description for Patent Application, p. 3 (VSI 1004); Product Description for Patent</p>	<p>“databases having an absence of compatible keys or record identifier (ID) columns of similar value or format in the schemas or structures of the database that would otherwise enable linking data within the constituent databases”</p>	<p>Intrinsic Evidence: ‘864 Patent — col. 1, ll. 44-60; col. 3, ll. 5-11, col. 6, ll. 4-19, col. 6 l. 62- col. 7 l. 17, col. 7, ll. 39-62.</p> <p>‘006 File History — 2003-10-30 Response to Office Action, Pg. 19-21 (VSI0000265-67).</p> <p>‘861 File History — 2008-9-3 Response to Office Action, Pg. 9-10 (VSI0098493-94).</p> <p>Extrinsic Evidence: American Heritage Dictionary at TIB00038722; Chambers Dictionary at TIB00038728; Oxford American Dictionary at TIB00038712; Webster’s</p>

² VSi’s citations to the ‘006 Patent for each of the terms also include the corollary citations to the same portions of the ‘864, ‘861 and ‘268 Patents. The Parties also incorporate by reference as “intrinsic evidence” each of the claims containing the claim terms to be construed, as well as any independent or dependent claims that those claims depend from/to.

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence ²	Defendants' Proposed Construction	Defendants' Supporting Evidence
		<p>Application, p. 19 (VSI 1020)</p> <p>Extrinsic Evidence: Definition of “disparate” from American Heritage Dictionary; Definition of “disparate” from Microsoft Encarta Dictionary; Definition of “disparate” from Oxford American College Dictionary; Definition of “disparate” from Random House Webster’s Dictionary; Claim Construction Order from 5:09-cv-5897-RS, Dkt. No. 194; P.R. 4-3 Statement from 5:09-cv-5897-RS, Dkt. No. 154.</p>		<p>New World College Dictionary at TIB00038740.</p>
<p>“3-dimensional visualizations” / “3-D visualizations”</p> <p>[‘864 claims 11-14, 16, 36-39, 41]</p>	<p>No construction necessary; plain and ordinary meaning applies.</p> <p>Alternatively,</p> <p>“a visual representation appearing to have length,</p>	<p>Intrinsic Evidence: ‘006 Patent – Abstract; 4:27-43; 4:44-53; 4:54-62; 5:8-27; Figs. 2-5.</p> <p>‘864 File History – 11/16/07 Office Action Granting Re-exam, p. 3.</p>	<p>“realistic views that mimic the views that the user will have when walking around the actual structure”</p>	<p>Intrinsic Evidence: ‘864 Patent at col. 5, ll. 9-13; col. 5, ll. 28-45.</p> <p>Extrinsic Evidence: ‘864 Reexamination History — Statements of Reasons for Patentability, at 2-3</p>

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence²	Defendants' Proposed Construction	Defendants' Supporting Evidence
	width and depth"	Extrinsic Evidence: Definition of "three-dimensional" from New Oxford American Dictionary		(VSI0000952-953). McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Edition (2002) at VSI00038695.

EXHIBIT A

II. Disputed Terms Applicable to Only VSi and MicroStrategy

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
<p>“OLAP cube”³</p> <p>[‘006 claims 1-2; ‘864 claims 1, 26; ‘861 claims 1, 3; and ‘268 claims 9, 15-16]</p>	<p>“a data structure having more than two dimensions that represents an online analytical processing view of data”</p>	<p>Intrinsic Evidence: ‘006 Patent – 1:11-14; 1:25-34; 1:41-57; 2:38-45; 2:52-3:3; 3:4-10; 3:17-25; 5:13-26; 5:46-6:20; 7:20-63; 8:8-24; 8:25-35; 8:36-47; 8:65-9:4; 9:12-20; 9:57-63; 9:64-10:9; 10:10-13; 10:14-44; 10:60-11:18; 11:59-12:6; 12:7-39; Figs. 1, 6-22.</p> <p>‘006 File History – 10/29/03 Response to Office Action, pp. 19-22 (VSI 265-8); 11/17/07 Decision on Request for Ex Parte Reexamination, p. 3 (VSI 659)</p> <p>‘864 File History – 6/5/08 Response to Office Action, pp. 20-21 (VSI 508-9)</p> <p>Provisional File History –</p>	<p>“a data structure having more than two dimensions”</p>	<p>Intrinsic Evidence: ‘864 Patent – 1:15-18, 1:44-60, 2:41-45, 8:46-51, 8:63-9:2, 10:6-40, 11:64-12:3, 12:23-26, Figs. 8-17.</p> <p>‘006 File History – 10/29/03 Response to Office Action, pp. 19-22 (VSI 265-8).</p> <p>‘006 Reexamination History, Applicant’s Response, 1/15/08, p. 2.</p> <p>Extrinsic Evidence: Claim Construction Order from 5:09-cv-5897-RS, Dkt. No. 194.</p> <p>Prior testimony of Mark Vasudevan</p>

³ In the interests of narrowing the Parties’ disputes, TIBCO does not oppose VSi’s proposed construction for “OLAP cube.” TIBCO does not take a position, however, regarding whether VSi’s proposed construction should be adopted by the Court. MicroStrategy does not agree to VSi’s proposed construction.

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
		<p>Product Description for Patent Application, pp. 3-4 (VSI 1004-5)</p> <p>Extrinsic Evidence: E.F. Codd, "Providing OLAP to User Analysis: An IT Mandate"; The BI Verdict website: "What is OLAP?"; Definitions of "cube" and "array, multidimensional" from OLAP Counsil.org; Definition of "data cube" from Glossary of Data Mining Terms; Excerpt from Ramez Elmasri, "Fundamentals of database systems"; Claim Construction Order from 5:09-cv-5897-RS, Dkt. No. 194; P.R. 4-3 Statement from 5:09-cv-5897-RS, Dkt. No. 154.</p>		
<p>"a persistent repository" ['268 claims 1, 9]</p>	<p>"a storage medium containing non-transient data"</p>	<p>Intrinsic Evidence: '006 Patent – Abstract; 1:58-64; 1:65-2:12; 2:52-55; 7:9-19; 8:48-64; 9:56-63; 10:10-13; 10:35-44; Fig. 6.</p>	<p>"repository of information stored on a disk or other permanent storage device"</p>	<p>Intrinsic Evidence: '268 Patent – 4:61-5:5, 5:11-40, 6:21-41, 6:53-7:7, 8:32-8:47.</p>

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
		<p>'006 File History – Applicant Arguments/Remarks Made in an Amendment, 10/30/2003, pp. 19-20, 22</p> <p>'864 File History – Applicant Arguments/Remarks Made in an Amendment, 6/5/2006, pp. 20-21</p> <p>'861 File History – Applicant Arguments/Remarks Made in an Amendment, 9/3/2008, pp. 10-11</p> <p>Extrinsic Evidence: Excerpt from Steven Roman, “Access Database Design and Programming;” Excerpt from Mark Levene & George Loizou, “A Guided Tour of Relational Databases and Beyond” (1999) (VSI-0013202-13209); Definition of “persistent storage” from MS Press Computer Dictionary; Definition of</p>		<p>'006 File History, 10/30/03 Response to Office Action, p. 19-21. '861 File History, 2/26/09 Interview Agenda.</p> <p>Extrinsic Evidence: Vasudevan Software, Inc. v. IBM and Oracle, 5:09-CV-05897, VSI Opening Claim Construction Brief (Doc. No. 162) at 7-10.</p> <p>Vasudevan Software, Inc. v. IBM and Oracle, 5:09-CV-05897, VSI Reply Claim Construction Brief at 1-4.</p> <p>U.S. Pat. No. 5,088,052 (“Spielman”)</p> <p>Definition of “persistence” from A Dictionary of Computing (4th ed. 1997); (MSTR-VSI00104499) Definition of “persistence” from The Computer Glossary (8th ed. 1998) (MSTR-VSI00104572);</p>

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
		<p>“persistent data” from PC Magazine Encyclopedia</p>		<p>Definition of “persistent data” from The Computer Desktop Encyclopedia (2nd ed. 1999) (MSTR-VSI00104558); Definition of “persistence” from The Computer Glossary (9th ed. 2001) (MSTR-VSI00104586); Definition of “repository” from Webster’s New World Computer Dictionary (10th ed. 2003) (MSTR-VSI00104629); Definition of “repository” from The Computer Glossary (8th ed. 1998) (MSTR-VSI00104573); Definition of “repository” from The Computer Desktop Encyclopedia (2nd ed. 1999) (MSTR-VSI00104559); Definition of “repository” from The Computer Glossary (9th ed. 2001) (MSTR-VSI00104587).</p> <p>Prior testimony of Mark Vasudevan.</p>

EXHIBIT A

Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
<p>“directly”</p> <p>[‘861 claims 1, 3; and ‘268 claims 1, 9]</p>	<p>No construction necessary; the plain and ordinary meaning applies.</p>	<p>Intrinsic Evidence: ‘006 Patent – 1:58-64; 2:43-45; 2:60-3:3; 4:14-16; 6:30-46; 8:48-64; 10:35-44; 13:8-15; Figs. 19-20.</p> <p>‘006 File History – 7/30/03 Office Action, p. 5.</p> <p>‘268 File History – 7/29/11 Notice of Allowability, p. 3.</p> <p>Extrinsic Evidence: Definition of “directly” from American Heritage Dictionary</p>	<p>“without storing the data in an intermediate repository”</p>	<p>Intrinsic Evidence: ‘861 Patent – 1:64-2:17, 2:47-49, 2:61-3:4, 4:13-15, 8:32-47, 10:15-24, Fig. 19. ‘861 File History, 9/3/2008 Amendment at 10-11.</p> <p>‘861 File History, 2/26/2009 Interview Agenda.</p> <p>Extrinsic Evidence: U.S. Pat. No. 5,088,052 (“Spielman”)</p> <p>Prior testimony of Mark Vasudevan.</p>
<p>“a dimensional format”</p> <p>[‘268 claims 1, 9]</p>	<p>“axes/perspectives of correlated data, for example ‘time’ or geography”</p>	<p>Intrinsic Evidence: ‘006 Patent – 1:35-40; 5:46-6:3; 7:20-40; 8:35-47; 9:57-63; 11:44-58; Figs. 6-18.</p> <p>‘006 Reexam File History – 9/11/2007 Reexam Request, p. 5-6 (VSI 582-3)</p> <p>Extrinsic Evidence: E.F.</p>	<p>“pages with the collation and correlation definitions and the correlation parameters for individual data elements”</p>	<p>Intrinsic Evidence: ‘268 Patent – 1:42-47, 5:41-6:12, 6:21-36, 7:8-8:20.</p> <p>Extrinsic Evidence: Prior testimony of Mark Vasudevan.</p>

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Term to be Construed	VSi's Proposed Construction	VSi's Supporting Evidence	MicroStrategy's Proposed Construction	MicroStrategy's Supporting Evidence
		Codd, "Providing OLAP to User Analysis: An IT Mandate"; Definition of "dimension" and "array, multidimensional" from OLAP Counsil.org; Definition of "dimension" from Glossary of Data Mining Terms; Excerpt from Ramez Elmasri, "Fundamentals of database systems"; MicroStrategy MDX Cube Reporting, p. 42 (MSTR-VSI00034173-400)		